

REMARKS

The Office Action has been received and carefully considered. The Office Action rejects claims 1, 46, 47, 58, 82, and 92 under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement, rejects claims 1-21, 23-40, 42-43, 45-46, 58-64, and 92 under 35 U.S.C. § 112, second paragraph, as allegedly using improper means plus function language, rejects claims 1-7, 11-16, 20, 21, 23, 24, 35-37, 39-43, 45-47, 58-64, 82-85, and 87-92 under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Patent No. 5,786,816 to Macrae *et al.* ("Macrae") in view of U.S. Patent No. 6,684,816 to Mitchell *et al.* ("Mitchell"), rejects claims 8-10, 28-34, and 38 under 35 U.S.C. § 103(a) as allegedly being obvious over Macrae in view of Mitchell in further view of U.S. Patent No. 6,314,556 to DeBusk *et al.* ("DeBusk"), rejects claims 17-19 under 35 U.S.C. § 103(a) as allegedly being obvious over Macrae in view of Mitchell in further view of U.S. Patent No. 5,542,024 to Balint *et al.* ("Balint"), rejects claims 25-27 under 35 U.S.C. § 103(a) as allegedly being obvious over Macrae in view of Mitchell and in further view of U.S. Patent Application Publication No. 2004/0039602 to Greenberg *et al.* ("Greenberg"), and rejects claims 86 under 35 U.S.C. § 103(a) as allegedly being obvious over Macrae in view of Mitchell and in further view of U.S. Patent Application No. 2002/0035486 to Huyn *et al.* ("Huyn"). Applicants respectfully traverse these rejections. Reconsideration of claims 1-21, 23-40, 42-43, 45-47, 58-64, and 82-92 is respectfully requested based on the following remarks.

I. The Office Has Not Established By A Preponderance Of Evidence Why A Person Skilled In The Art Would Not Recognize In The Disclosure A Description Of The Invention Defined By The Claims

Claims 1, 46, 47, 58, 82, and 92 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. The Office asserts the limitations

“wherein the skipping comprises refraining from executing one or more intervening nodes between a last executed node and a next executed node along the currently traversed patient care pathway” are “not supported in the instant disclosure.” *See* Office Action, page 3. Applicants respectfully traverse the rejection.

The Office Action has provided no reasoning or evidence to support its bare assertion regarding the written description requirement. MPEP § 2163.04 states that a “description as filed is *presumed* to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the Examiner to rebut the presumption.” (Emphasis added.) While the Office is not required to offer something more than what MPEP § 2163.04(I)(B) requires, the “examiner *must set forth express findings of fact* which support the lack of written description conclusion.” *See* MPEP § 2163.04(I) (emphasis added.) The Office’s bare declaration in and of itself is not sufficient evidence or reasoning to rebut the presumption of the adequacy of the written description of the specification.

For at least the above reasons, it is respectfully requested that the above written description rejection be withdrawn.

II. The Rejection Of Claims 1-21, 23-40, 42-43, 45-46, 58-64, And 92 Under 35 U.S.C. § 112, Second Paragraph, Is Moot

Claims 1-21, 23-40, 42-43, 45-46, 58-64, and 92 under 35 U.S.C. § 112, second paragraph, as allegedly using improper means plus function language. *See* Office Action, page 3. Applicants respectfully submit that the rejection to claims 1-21, 23-40, 42-43, 45-46, 58-64, and 92 under U.S.C. § 112, second paragraph, is moot in view of the amendments to the claims submitted

herein. Therefore, the rejection to the claims under U.S.C. § 112, second paragraph, must be withdrawn.

III. The Applied References Fail To Teach Or Suggest Skipping In Response To Input Indicating One Or More Nodes To Be Traversed From The Healthcare Practitioner During Traversal Of The Currently Traversed Patient Care Pathway

Claim 1, as amended, recites “wherein the skipping comprises refraining from executing one or more intervening nodes between a last executed node and a next executed node along the currently traversed patient care pathway *in response to input indicating one or more nodes to be traversed from the healthcare practitioner during traversal of the currently traversed patient care pathway.*” The applied references fail to teach or suggest these limitations.

The Office Action admits that “Macrae does not explicitly teach [a] navigation means arranged to ... permit the healthcare practitioner to traverse a route across the map that skips one or more nodes ... wherein the skipping comprises refraining from executing one or more intervening nodes between a last executed node and a next executed node along the currently traversed patient care pathway.” *See* Office Action, pages 7-8. In an attempt to cure this admitted deficiency, the Office Action asserts that since “Mitchell teaches a computer implemented system for the production of medical records that allows an healthcare practitioner (‘expert’) to skip over certain question nodes along the suggested pathway,” it would “have been obvious for one of ordinary skill in the art at the time the invention was made to allow healthcare practitioners to skip over certain nodes as taught by Mitchell.” *See* Office Action, pages 8-9. Applicants respectfully submit that this reasoning flawed for at least the following reasons.

In support of this assertion, the Office Action relies on a passage of Mitchell that discloses operating the Mitchell system in an expert mode. *Id.* More specifically, the relied upon passage of Mitchell recites:

In contrast, the use of the “expert” mode causes *the CaD program to skip over questions that have a defaulted or inferred answer. The CaD program will stop only at those questions which are not yet answered.* If the user wants to change a particular defaulted answer, he may do so using the edit mode. The expert mode is called that for a reason; it assumes the user is intimately familiar with the CaD program. In this case the expert mode can greatly increase the speed and efficiency of similar documents. In the preferred embodiment the physician user might use this feature to skip ahead to enter the diagnosis. The diagnosis would then have several implications for the final document (medical chart). The physician user would then fill in unanswered question and edit the inferred questions as needed. The expert user must be aware of the default values and review and edit the document. A beginning user would be restricted from using the expert mode. This is accomplished by the use of a password system and a classification of user privileges.

Mitchell, col. 39, ll. 47-64 (emphasis added). This passage of Mitchell, however, fails to teach or suggest “wherein the skipping comprises refraining from executing one or more intervening nodes between a last executed node and a next executed node along the currently traversed patient care pathway *in response to input indicating one or more nodes to be traversed from the healthcare practitioner during traversal of the currently traversed patient care pathway.*”

As described above, the CaD program of the Mitchell system is configured to operate in two different modes, an interview mode and an expert mode. In the interview mode, the CaD program will stop at each question and wait for user input. In the expert mode, the *CaD program* will automatically bypass a question that has a default answer or an inferred answer. Accordingly, at most, the CaD program determines which questions to automatically bypass based on whether a question is a default question, an inferred question, or any other type of question.

In contrast, the claimed invention allows *a healthcare practitioner* to skip one or more nodes from the series of the plurality of interlinked nodes that represent a currently traversed patient care pathway. More specifically, the claimed invention permits the healthcare practitioner to refrain “from executing one or more intervening nodes between a last executed node and a next executed node along the currently traversed patient care pathway *in response to input indicating one or more nodes to be traversed from the healthcare practitioner during traversal of the currently traversed patient care pathway.*” That is, the claimed invention allows the *healthcare practitioner* to determine which, if any, nodes are to be skipped. Further, the claimed invention permits the healthcare practitioner to make this determination “*during traversal of the currently traversed patient care pathway.*” Accordingly, Applicants respectfully assert that the applied references fail to teach or suggest “wherein the skipping comprises refraining from executing one or more intervening nodes between a last executed node and a next executed node along the currently traversed patient care pathway *in response to input indicating one or more nodes to be traversed from the healthcare practitioner during traversal of the currently traversed patient care pathway,*” as presently claimed.

Claim 46, as amended, recites “wherein the skipping comprises refraining from executing one or more intervening nodes between a last executed node and a next executed node along the currently traversed patient care pathway *in response to input indicating one or more nodes to be traversed from the healthcare practitioner during traversal of the currently traversed patient care pathway.*” Claim 47, as amended, recites “wherein the skipping comprises refraining from executing one or more intervening nodes between a last executed node and a next executed node along the currently traversed patient care pathway *in response to input indicating one or more nodes to be traversed from the healthcare practitioner during traversal of the currently*

traversed patient care pathway.” Claim 58, as amended, recites “wherein the skipping comprises refraining from executing one or more intervening nodes between a last executed node and a next executed node along the currently traversed patient care pathway *in response to input indicating one or more nodes to be traversed from the healthcare practitioner during traversal of the currently traversed patient care pathway.*” Claim 82, as amended, recites “wherein the skipping comprises refraining from executing one or more intervening nodes between a last executed node and a next executed node along the currently traversed patient care pathway *in response to input indicating one or more nodes to be traversed from the healthcare practitioner during traversal of the currently traversed patient care pathway.*” Claim 92, as amended, recites “wherein the skipping comprises refraining from executing one or more intervening nodes between a last executed node and a next executed node along the currently traversed patient care pathway *in response to input indicating one or more nodes to be traversed from the healthcare practitioner during traversal of the currently traversed patient care pathway.*” Accordingly, Applicants respectfully assert that the applied references fail to teach or suggest these limitations for reasons analogous to those provided above with regard to claim 1.

Under 35 U.S.C. § 103, all claim limitations must be taught or suggested in the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). MPEP § 2143 reinforces this principle: “[T]he prior art reference (or references when combined) must teach or suggest all the claim limitations.” Because the applied references fail to disclose or suggest “wherein the skipping comprises refraining from executing one or more intervening nodes between a last executed node and a next executed node along the currently traversed patient care pathway in response to input indicating one or more nodes to be traversed from the healthcare practitioner during traversal of

the currently traversed patient care pathway,” a rejection over the applied references would be improper.

IV. Conclusion

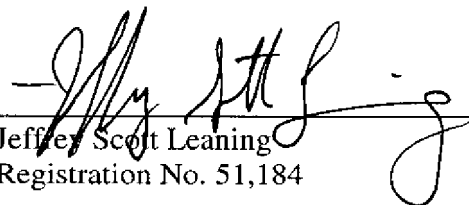
In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

The present response is submitted together with a request for continued examination and associated fee. In the event that a variant exists between the amount tendered and that determined by the U.S. Patent and Trademark Office to enter this Reply or to maintain the present application pending, please charge or credit such variance to the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,

HUNTON & WILLIAMS LLP

By:


Jeffrey Scott Leaning
Registration No. 51,184

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Hunton & Williams LLP
Intellectual Property Department
1900 K Street, N.W., Suite 1200
Washington, DC 20006-1109
(202) 955-1500 (telephone)
(202) 778-2201 (facsimile)

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